

Message Text

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ACTION EB-07

INFO OCT-01 ISO-00 IO-10 AF-06 ARA-06 EA-07 EUR-12 NEA-10

OIC-02 AGR-05 CEA-01 CIAE-00 COME-00 DODE-00 FRB-03

H-02 INR-07 INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01

AID-05 CIEP-01 SS-15 STR-04 TAR-01 TRSE-00 USIA-06

PRS-01 SP-02 FEAE-00 OMB-01 /133 W

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P R 241212Z NOV 75

FM USDEL MTN GENEVA

TO SECSTATE WASHDC PRIORITY 812

INFO AMEMBASSY BONN

AMEMBASSY BRASILIA

AMEMBASSY BRUSSELS

USMISSION EC BRUSSELS

AMEMBASSY BUENOS AIRES

AMEMBASSY CANBERRA

AMEMBASSY COPENHAGEN

AMEMBASSY DUBLIN

AMEMBASSY THE HAGUE

AMEMBASSY HELSINKI

AMEMBASSY LAGOS

AMEMBASSY LONDON

AMEMBASSY LUXEMBOURG

AMEMBASSY MEXICO

AMEMBASSY OTTAWA

AMEMBASSY PARIS

USMISSION OECD PARIS

AMEMBASSY NEW DELHI

AMEMBASSY ROME

AMEMBASSY OSLO

AMEMBASSY STOCKHOLM

AMEMBASSY TOKYO

AMEMBASSY WELLINGTON

AMEMBASSY VIENNA

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E.O. 11652: N/A

TAGS: ETRD, GATT

SUBJECT: MTN: SAFEGUARDS GROUP MEETING: NOVEMBER 17-20

1. SUMMARY. BUSINESSLIKE MEETING INCLUDED LENGTHY, SPECIFIC DISCUSSIONS WITH WIDE PARTICIPATION ON CHECKLIST SIXTEEN QUESTIONS CONCERNING ELEMENTS SAFEGUARD SYSTEM. GROUP EVIDENCED WILLINGNESS TO IDENTIFY AND EXAMINE PROBLEMS WITHOUT CONFRONTATION OR POLARIZATION. MANY DELS RECOGNIZED THAT SYSTEM COVERAGE AND NON-XIX ACTIONS A MAJOR PROBLEM, AND GROUP AGREED RETURN THIS SUBJECT AT NEXT MEETING. CONSENSUS REACHED THAT NEXT MEETING (APRIL) WILL ADDRESS PARTICULAR ELEMENTS OF SYSTEM, AS WELL AS PRACTICES TO BE COVERED, IDENTIFIED AS NEEDING FURTHER DISCUSSION. SECRETARIAT WILL DO STUDIES ON MULTI-LATERAL SURVEILLANCE SYSTEMS, AND DISPUTE SETTLEMENT. DELS MAY TABLE PAPERS FOR DISCUSSION IF THEY WISH; MEXICANS WILL DO SO. END SUMMARY.

2. MEETING INCLUDED FIVE PLENARY SESSIONS. U.S. DEL CONSULTED PRIOR TO MEETING WITH SECRETARIAT (PATTERSON), AUSTRALIAN, CANADIAN, AND JAPANESE DELEGATIONS, AND BRAZILIAN AND MEXICAN DELEGATIONS DURING MEETING, REGARDING SUBSTANTIVE ASPECTS OF SESSIONS AND FUTURE WORK PROGRAM. EC (ABBOTT) RESISTED PRIOR CONSULTATION WITH U.S., FOR NO APPARENT REASON.

3. FUTURE WORK. SECRETARIAT REQUESTED TO DO STUDIES ON MULTILATERAL SURVEILLANCE SYSTEMS AND DISPUTE SETTLEMENT APPROACHES. GROUP AGREED TO LDC REQUEST THAT SECRETARIAT PROVIDE LDCS WITH ACCOUNT OF IDEAS PRESENTED IN MEETING, BUT THROUGH GATT TECHNICAL ASSISTANCE PROGRAM AND NOT IN FORMAL GATT DOCUMENT, AS FIRST REQUESTED. IN ADDITION TO TWO LIMITED OFFICIAL USE

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SECRETARIAT STUDIES, AGENDA OF APRIL MEETING INCLUDES DISCUSSION OF RELATIONSHIP OF IMPROVED SAFEGUARD SYSTEM TO ACTIONS NOW OUTSIDE CURRENT SYSTEM; "COMPARABLE FOOTING OF COMMITMENTS;" CRITERIA; DEFINITION MINIMUM LEVELS OF IMPORTS; TIME LIMITS AND DEGRESSIVITY; CONTENT OF NOTIFICATIONS; DISTINCTION BETWEEN SHORT AND LONG TERM ACTIONS; PERIODIC REPORTING; LINK BETWEEN SAFEGUARD ACTION AND ADJUSTMENT PROGRAMS;

BURDEN SHARING; MFN VS SELECTIVE APPLICATION; AND
APPLICATION OF ALL OF ABOVE TO LDCS.

4. DISCUSSION OF GATT CHECKLIST:

(A) COVERAGE OF SYSTEM. U.S. (HARTZELL), DRAWING
ON TPSC 75-24 FOR THIS AND OTHER POINTS, STATED NEED
FOR ADDRESSING RANGE OF GATT OBLIGATIONS AND PROVI-
SIONS IN ADDITION TO XIX, AS WELL AS NON-GATT PRAC-
TICES, AND REQUESTED GROUP RETURN AT NEXT
MEETING FOR FURTHER EXPLORATION THIS POINT, IN LIGHT
OF THIS MEETING'S DISCUSSION OF SAFEGUARD MECHANISM.
AUSTRALIA (WARWICK-SMITH) REPEATED ITS POSITION THAT
BROAD SCOPE OF ACTIONS BE CONSIDERED, ESPECIALLY
CONCEPT OF ENTIRE SECTORS INSULATED IN SOME
COUNTRIES FROM NEED FOR SAFEGUARD ACTION.
AUSTRALIA SEEKS A COMMON DEGREE OF VULNERABILITY;
RETURNED THIS THEME THROUGHOUT MEETING.
EC QUESTIONED WHETHER NON-XIX ACTIONS WERE SAFEGUARDS.
ARGUED LEGITIMACY OF ACTIONS UNDER OTHER ARTICLES,
ALTHOUGH NOTIFICATION MIGHT BE NEEDED; SAID SOME
NON-GATT PRACTICES (READ VRAS) MIGHT NEED "SPECIFIC
SOLUTIONS"; AND CITED NEED FOR SURVEILLANCE TO
INSURE TRANSPARANCY. CANADA (ROY) DID NOT
CONSIDER ARTICLE XIX INADEQUATE BUT THAT APPLICATION
COULD BE IMPROVED. SUGGESTION FOR IN-DEPTH
EXAMINATION OF MOTIVATION FOR NOT USING XIX NOT
ACCEPTED. JAPAN (MIZOGUCHI, UKAWA) AS BEFOR WANTED TO
CONFINE PRESENT CONSIDERATION TO XIX, BUT NOW INDICATED
WILLINGNESS TO CONSIDER NON-XIX QUESTIONS LATER. CLAIMED
THAT JAPAN HAS OBSERVED RULES BUT HAS DESISTED
FROM USING XIX. SOME OTHER DELEGATIONS ALSO EX-
PRESSED WILLINGNESS TO EXPLORE THIS AGENDA ITEM FURTHER.
(B) CRITERIA FOR SERIOUS INJURY. IN
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CONTRAST TO U.S. COMMENT THAT CURRENT SERIOUS
INJURY CRITERIA PROBABLY ADEQUATE, GIVEN
PRACTICAL PROBLEMS OF ANY REFINEMENT, MANY DELEGA-
TIONS, INCLUDING CANADA, EC, CALLED FOR MORE
PRECISE CRITERIA. EC AND CANADA STRESSED NEED FOR
PRESERVING LINK BETWEEN IMPORTS AND SERIOUS INJURY. EC
SUGGESTED WOULD BE USEFUL TO REVIEW HISTORY ON RANGE
OF CRITERIA USED IN OTHER AREAS, INCLUDING MFA, 1960
MARKET DISRUPTION EXERCISE, ANTIDUMPING CODE, AND
U.S. TRADE ACT. ITS SUGGESTION AT END OF MEETING FOR
A SECRETARIAT STUDY THIS QUESTION BLOCKED BY SOME
LDCS AND JAPAN, LATTER WITH SPECIFIC OBJECTION TO
INCLUSION "MARKET DISRUPTION." LDCS SUPPORTED GREATER
PRECISION AND ELIMINATION OF CONCEPT "THREAT OF SERIOUS
INJURY" WITH RESPECT TO LDCS. CANADA POINTED OUT

POSSIBLE DETERRENT EFFECT OF TOO-STRINGENT CRITERIA BUT NOTED THAT PRESENT CRITERIA NOT REASON FOR CURRENT DISUSE OF XIX. JAPAN PROPOSED POSSIBILITY OF CHECKLIST OF FACTORS AS APPROACH TO DEFINITION CRITERIA AND ALSO NOTED PROBLEM OF WHO JUDGES WHETHER CRITERIA ARE MET. BRAZIL SUGGESTED A CHECKLIST MIGHT DIFFERENTIATE CRITERIA FOR DCS AND LDCS. U.S., RESPONDING TO EC MENTION OF TRADE ACT, SUGGESTED THOSE CRITERIA MIGHT SERVE IN ANY CHECKLIST EXERCISE, BUT AGREED WITH AUSTRIA THAT ACTUAL APPLICATION OF SYSTEM MIGHT BE MORE SIGNIFICANT THAN REFINING CRITERIA.

(C) PRIOR NOTIFICATION AND CONSULTATION. GENERAL AGREEMENT THAT MECHANISM SHOULD BE STRENGTHENED, ALTHOUGH SOME, INCLUDING EC, LINKED ANY CHANGE TO QUESTION OF TYPE OF SURVEILLANCE MECHANISM WHICH MIGHT EMERGE. LDCS SUPPORTED STRICTER PROCEDURES. CANADA FELT PRESENT MECHANISM ADEQUATE.

(D) CRITICAL CIRCUMSTANCES. ON RELATED QUESTION OF CRITICAL CIRCUMSTANCES WHERE PRIOR CONSULTATION NOT REQUIRED, CANADA AND JAPAN ALONG WITH U.S. EXPRESSED DOT THAT FURTHER DEFINITION DESIRABLE. MEXICO, ARGENTINA, AND INDIA SOUGHT REDEFINITION OR STRENGTHENING OF CRITICAL CIRCUMSTANCES OR DENIAL OF USE OF SUCH PROVISION FOR CASES INVOLVING IMPORTS FROM LEDS.

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(E) MINIMUM LEVELS, TIME LIMITS, AND DEGRESSIVITY.

THIS QUESTION ALSO FREQUENTLY LINKED TO SURVEILLANCE.

EC MADE NO COMMENT. AUSTRALIA NOTED DIFFICULTIES WITH ARBITRARY FORMULAS. CANADA STATED VIEW

THAT SINCE SAFEGUARDS ARE A PRIORI SHORT-TERM, TIME

LIMITS IRRELEVANT. MINIMUM LEVEL OF IMPORTS PRESENTED

PROBLEMS OF DEFINITION FOR MANY ALTHOUGH MOST SUPPORTED IN PRINCIPLE. JAPAN MADE LONGEST INTERVENTION

ON DIFFICULTIES INVOLVED BUT ALSO LINKED PROBLEM TO

SURVEILLANCE. U.S. STRESSED IMPORTANCE OF THESE

FOR ENSURING TEMPORARY NATURE OF SAFEGUARD ACTIONS.

(G) ADJUSTMENT ASSISTANCE. LDC CASE FOR

DOMESTIC ADJUSTMENT PROGRAM AS MANDATORY PRIOR

CONDITION FOR ACTION PRESENTED BY SEVERAL SPOKESMEN. THIS POSITION OPPOSED BY NORDICS, AUSTRALIA, U.S., JAPAN, AND EC, ALTHOUGH U.S. THOUGHT SAFEGUARDING COUNTRY WOULD NEED TO EXPLAIN ADJUSTMENT PROCESSES AT WORK. AUSTRIA AND AUSTRALIA STRESSED THAT ADJUSTMENT ASSISTANCE NOT ALWAYS APPROPRIATE. LATTER NOTING WITH JAPAN THAT ADJUSTMENT NOT SYNONYMOUS WITH VACATING AN INDUSTRY. JAPAN, CANADA, AND U.S. POINTED OUT THAT ADJUSTMENT ASSISTANCE CAN BE BOTH GOVERNMENT AND PRIVATE INITIATIVE.

(G) COMPENSATION AND RETALIATION (C/R). DCS, INCLUDING NORDICS, CANADA, EC, U.S., GENERALLY SUPPORTED CONCEPT THAT C/R NOT APPROPRIATE WHEN SAFEGUARD ACTION JUSTIFIED, I.E., CRITERIA OF NEW SYSTEM MET IN GIVEN CASE. UK FOR HK NOTED THAT DECISION ON C/R SHOULD DEPEND ON JUSTIFICATION, DURATION OF SAFEGUARD ACTION, AND ADJUSTMENT MEASURES. EC SAID C/R QUESTION OUGHT NOT TO ARISE WHEN ACTION TEMPORARY AND APPROVED BY SURVEILLANCE BODY. CANADA NOTED C/R NOT REALISTIC MEANS OF RECTIFYING BALANCE OF OBLIGATIONS. JAPAN STRESSED IMPORTANCE OF PRESERVATION OF RIGHT TO COMPENSATION OR RETALIATION AS FINAL GUARANTEE AGAINST ABUSE OF XIX. U.S. SAID C/R WAS KEY QUESTION WHICH SHOULD BE APPROACHED IN TERMS LIMITED OFFICIAL USE

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OF (1) IMPACT IN COUNTRIES WILLINGNESS TO STAY WITHIN SAFEGUARD SYSTEM, AND (2) DESIRABILITY OF KEEPING SAFEGUARD ACTIONS TEMPORARY. LDCS RECALLED DIFFICULTY OF TAKING RETALIATORY ACTION FOR SMALL POOR COUNTRIES BUT URGED PAYMENT WHEN LDC TRADE AFFECTED BY DC SAFEGUARD ACTION.

(H) SELECTIVE APPLICATION. PREVIOUS POSITIONS MAINTAINED. AUSTRALIA, CANADA, JAPAN, AND UK FOR HK SUPPORTED MFN WHILE NORDICS AND EC CALLED FOR SELECTIVE APPROACH IN SOME CASES. EC TRIED OUT NOVEL ARGUMENT THAT "SUSPEND THE OBLIGATION IN WHOLE OR IN PART" IN ARTICLE XIX COULD IMPLY COUNTRY COVERAGE AS WELL AS DEGREE OF ACTION. LDCS SOUGHT SELECTIVE APPLICATION IN THEIR FAVOR. U.S. AVOIDED COMMENT.

(I) DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES. BASIC LDC POSITION OF AUTOMATIC EXEMPTION FROM ALL SAFEGUARD ACTIONS ROLLED OUT, BUT THEN MODIFIED BY EMPHASIS ON NEED FOR STRICT CRITERIA FOR EXCEPTIONAL CIRCUMSTANCES WHEN SAFEGUARD ACTIONS PERMITTED AGAINST LDCS. LDCS ALSO MENTIONED POSSIBLE DIFFERENTIAL TREATMENT WITH REGARD TO CRITERIA, SEVERITY OF ACTION(WHERE EXEMPTION NOT POSSIBLE),

CREATION SURVEILLANCE BODY, AND SUBSTITUTION
DOMESTIC ADJUSTMENT FOR IMPORT RESTRICTIONS. MEXICO
SAID IT WOULD PRESENT SUGGESTIONS ON THESE
POINTS IN PAPER ON SURVEILLANCE BODY PRIOR TO NEXT
MEETING. EC SAID THAT AUTOMATIC EXEMPTION INCON-
CEIVABLE, BUT SOLUTIONS MIGHT LIE IN FLEXIBLE
ADMINISTRATION SAFEGUARD MEASURES. U.S. FLATLY STATED
THAT AUTOMATIC EXEMPTION NOT POSSIBLE, BUT NOTED IT
PRESENTLY EXPLORING POSSIBLE OPTIONS ON OTHER LDC
PROPOSALS AND POINTED OUT THAT U.S. VIEWS EXPRESSED ON
OTHER AGENDA ITEMS INDICATED AREAS WHERE PRELIMINARY
THINKING MIGHT BE IN CONSONANCE WITH SUGGESTIONS
MADE BY DEVELOPING COUNTRIES. BRAZIL, NOTING ONLY
TWO DCS HAD COMMENTED, WELCOMED U.S. REMARKS. IT
EXPRESSED HOPE THAT U.S. COULD ENGAGE IN
DIALOGUE ON DIFFERENTIAL TREATMENT WITH RESPECT TO
DEFINITION OF INJURY, TIME LIMITS, DEGRESSIVITY,
AND DOMESTIC ADJUSTMENT. NIGERIA STATED THAT PERHAPS
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SOME FORM OF PRESUMPTION OF EXEMPTION MIGHT BE
POSSIBLE TO INSURE THAT LEAST DEVELOPED COUNTRIES
RECEIVED BENEFIT. EC RESPONDED TO NIGERIA BY SAYING
THAT PERHAPS EXEMPTION WOULD BE POSSIBLE FOR LEAST
DEVELOPED UNLESS SPECIAL REASONS WOULD NOT PERMIT.
(J) SURVEILLANCE. THERE WAS GENERAL CONSENSUS
ON DESIRABILITY OF MULTILATERAL SURVEILLANCE
SYSTEM. NORDICS REQUESTED SECRETARIAT PROCEED WITH
STUDY OF THIS ISSUE PROPOSED LAST MEETING. THERE
WAS MUCH SUPPORT AND NO OPPOSITION FOR SECRETARIAT
STUDY. JAPAN, U.S., AND AUSTRALIA QUALIFIED SUPPORT
OF ANY SURVEILLANCE BODY UNTIL IT BECOMES CLEARER WHAT
ROLE SUCH ARRANGEMENT MIGHT PLAY. AUSTRALIA EXPRESSED
RESERVATION TO A FORMALISTIC APPROACH, AND STRESSED
THAT SYSTEM MIGHT NOT PREEMPT SOVEREIGNTY CPS.
(K) DISPUTE SETTLEMENT. U.S., SUPPORTED BY
CANADA, SUGGESTED SECRETARIAT FACTUAL STUDY OF
DISPUTE RESOLUTION PRACTICES. GENERAL COMMENTS ON
DISPUTE SETTLEMENT WERE MADE BY OTHER DELEGA-
TIONS MOSTLY IN CONTEXT OF SURVEILLANCE DISCUSSIONS.
EC, NOTING SURVEILLANCE BODY NEEDED TO DO MORE THAN
HOUSEKEEPING, STATE IT WOULD HAVE PROPOSALS FOR
SURVEILLANCE AND DISPUTE SETTLEMENT. WHILE AVOIDING
SUPPORT OF U.S. PROPOSAL, IT VOICED HOPED FOR DISCUSSION AT
EARLY STAGE ON FUNCTION AND COMPOSITION OF A SURVEIL-
LANCE GROUP.
(L) BALANCE OF OBLIGATIONS, (M) BURDEN SHARING,
(N) THIRD COUNTRY INTERESTS. THESE QUESTIONS WERE
LIMPED TOGETHER WITH LITTLE SAID AND MUCH UNCERTAINTY
ON WHAT FIRST TWO REFERRED TO. AUSTRALIA REVERTED

BACK TO QUESTION OF NON-XIX PRACTICES, BUT THEN IN
ADDITION NOTED NEED FOR EXPORTING COUNTRY, AS WELL
AS IMPORTER, TO PROVIDE INFORMATION IN CASES OF
SAFEGUARD ACTIONS AND TO COOPERATE IN FINDING
SUITABLE REMEDIES. ROMANIA STATED EXPORTERS BEAR
BRUNT OF BURDEN AND IMPORTERS SHOULD SHARE. OTHER LDCS
CONCURRED. U.S. COMMENTED ON NED TO TAKE INTO
ACCOUNT INTERESTS OF OTHER IMPORTERS AND EXPORTERS NOT
DIRECTLY AFFECTED BY ACTION ITSELF BUT BY RESULTING
TRADE DIVERSION. FINLAND SAID BURDEN-SHARING SHOULD
BE FURTHER EXAMINED. AUSTRALIA NOTED PROBLEMS
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ARISING FROM ANTICIPATION OF TRADE DIVERSION AS IN
THE CASE OF BEED.

(O) SHORT-TERM VS LONG TERM. COMMENTS AT EARLIER
STAGES OF MEETING SHOWED NO CLEAR OPTIONS OR
IDENTIFICATION OF PROBLEMS IN THIS AREA AND WIDE
RANGE OF COMMENTS. U.S. SAID SAFEGUARD SYSTEM FOR
SHORT TERM ACTIONS ONLY AND NOTED PROBLEM OF
SEASONAL/CYCLICAL SAFEGUARD ACTIONS.

(P) DOMESTIC PROCEDURES. U.S. DEL NOTED
DESIRABILITY OF GUIDELINES FOR DOMESTIC PROCEDURES
TO BE FOLLOWED PRIOR TO ACTION. JAPAN AND CANADA
COMMENTED THAT THESE DID NOT SEEM APPROPRIATE.

5. GROUP AGREED SCHEDULE NEXT MEETING FOR APRIL
WITH EXACT TIME TO BE PROVIDED BY SECRETARIAT.
CHAIRMAN WILL MAKE ORAL REPORT THIS MEETING TO TNC.
OFFICIAL SUMMING-UP WILL BE SENT SEPTEL. WALKER

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